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No. 83-136

In the Supreme Court of the United States

OCTOBER TERM, 1983

LAKE ERIE ALLIANCE FOR THE PROTECTION OF THE
COASTAL CORRIDOR, INC., ET AL., PETITIONERS

v.

UNITED STATES ARMY CORPS OF ENGINEERS, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE THIRD CIRCUIT*

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly upheld the district court's determination, on a motion for summary judgment, that the Corps of Engineers had fully complied with the National Environmental Policy Act and all other applicable laws in issuing a permit to United States Steel Corp. to construct channels, piers, and water intake and discharge structures in Lake Erie.

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OPINIONS BELOW

The opinion of the United States District Court for the Western District of Pennsylvania (Pet. App. A-141 to A-177) is reported at 526 F. Supp. 1063. The judgment orders of the court of appeals (Pet. App. A-123, A-126 and A-127) are not reported.

JURISDICTION

The judgment order of the court of appeals was entered on February 16, 1983 (Pet. App. A-127). A petition for rehearing was denied on March 11, 1983 (Pet. App. A-129). The petition for a writ of certiorari was filed on June 9, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTES AND INTERNATIONAL AGREEMENT INVOLVED

The statutes and international agreement relied upon by the petitioners are:

(1)

1. The National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, portions of which are set forth at Pet. App. A-74 to A-82;
2. The Federal Water Pollution Control Act, 33 U.S.C. (& Supp. V) 1251, portions of which are set forth at Pet. App. A-84 to A-87;
3. The Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*, portions of which are set forth at Pet. App. A-88 to A-91; and
4. The Agreement on the Great Lakes Water Quality, Nov. 22, 1978, United States-Canada, 30 U.S.T. 1383, T.I.A.S. No. 9257, set forth at Pet. App. A-93 to A-120.

STATEMENT

On March 2, 1977, United States Steel submitted an application to the United States Army Corps of Engineers for a permit to construct certain channels and piers in Lake Erie to be used in connection with a new steel plant to be constructed on the shore of the lake between Conneaut, Ohio, and West Springfield, Pennsylvania. United States Steel also applied for permission to build structures that would be used to withdraw and discharge water from the lake during the operation of the plant.

The Corps of Engineers immediately commenced the preparation of a statement on the environmental impact of the proposed action, as required by Section 102 of the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. 4332. The Corps established a Technical Team, composed of representatives of the Corps, the United States Environmental Protection Agency, the United States Fish and Wildlife Service, the Federal Regional Counsel, the National Marine Fisheries Service, the State of Ohio and the Commonwealth of Pennsylvania. Two years later, on April 26, 1979, the Technical Team completed and filed

with the Environmental Protection Agency a Final Environmental Impact Statement ("FEIS"). The activities taken by the team in the course of preparing the FEIS are summarized in Appendix A to this Brief.¹ The FEIS itself is 3,470 pages in length. On June 18, 1979, the Corps issued the requested permit to United States Steel.

On July 19, 1979, the petitioners, who aver that they are local residents, environmental groups, concerned citizens, and members of labor unions threatened with unemployment as a consequence of the relocation of steel plants, filed a complaint seeking declaratory and injunctive relief against the Corps of Engineers because of its alleged failure to comply with NEPA, the Federal Water Pollution Control Act, 33 U.S.C. (& Supp. V) 1251 *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*, the Migratory Bird Act, 16 U.S.C. 701 *et seq.*, and the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*² Petitioners sought to rescind the Corps of Engineers' permit pending the preparation of a new environmental impact statement. They also sought revocation of a certification obtained from the State of Ohio under Section 401(a)(1) of the Clean Water Act, 33 U.S.C. (Supp. V) 1341(a)(1), that is a prerequisite to the federal permit.

On September 10, 1980, United States Steel intervened as a defendant. On April 8, 1981, the defendants filed a motion for summary judgment on the ground that, as a matter of law, the environmental impact statement prepared by the Corps of Engineers, and the permit subsequently issued, were in full compliance with all applicable statutes, and that the federal actions taken in this matter had not been arbitrary, capricious, or an abuse of discretion. The petitioners

¹This summary was a part of the appendix filed by the petitioners in the court of appeals. See C.A. App. 2199-2229.

²An amended complaint was subsequently filed by petitioners, but it did not differ materially from the original complaint.

filed a motion of their own requesting partial summary judgment, although they argued that the entire case could not be disposed of by summary judgment because the FEIS dealt with many disputed matters. After reviewing the petitioners' many contentions, the district court granted the government's motion for summary judgment, denied the petitioners' motion for summary judgment, and dismissed the case (Pet. App. A-141 to A-177). The court noted that "[w]hile we have been impressed with the conscientious efforts of [petitioners] to ferret out every possible procedural deficiency during this two-year process, we have been even more impressed with the good faith efforts of the Army Corps of Engineers" (Pet. App. A-176).

The court of appeals, after hearing oral argument, summarily affirmed (Pet. App. A-127).³

³During oral argument, held on January 24, 1983, the court raised the question whether the case was moot because United States Steel had not commenced the construction authorized by the permit, and the permit expired December 31, 1983. The court requested that United States Steel (which was not represented by counsel at the argument) indicate whether it deemed the case to be moot. On January 25, 1983, the court issued a judgment order, affirming the district court's decision (Pet. App. A-123). On January 27, 1983, the Chief Deputy Clerk of the court addressed a letter to United States Steel asking "whether the case is moot in the corporation's view." App. B, *infra*, 22a. On January 31, 1983, the court suspended the judgment order issued on January 25, 1983, and indicated that the "Court continued its desire to receive a response from United States Steel" (Pet. App. A-126). On February 9, 1983, United States Steel responded, pointing out that the permit provided for its automatic expiration upon certain conditions, or for its revocation, and that since the permit had not expired or been revoked "[i]n the view of USS the Permit is still a valid Permit, and USS wishes to retain all of its rights under the Permit." App. C, *infra*, 26a. On February 16, 1983, the court of appeals issued another judgment order, again affirming the judgment of the district court (Pet. App. A-127). United States Steel has since informed the government that it has no current intention of commencing construction under the permit. App. D, *infra*, 28a.

ARGUMENT

Review by this Court is unwarranted for the sufficient reason that this case is, for all practical purposes, moot. The permit challenged by petitioners expires on December 31, 1983 (Pet. 4, n.1), and United States Steel has informed the government that it will not commence construction under the permit prior to its expiration. App. D, *infra*, 28a. In these circumstances, further judicial consideration of petitioners' claims would be imprudent.

In any event, petitioners once more advance arguments that have been carefully considered and properly rejected by two lower courts. Petitioners' fundamental error lies in their assertion that NEPA imposes the substantive duty upon federal agencies considering a proposed action to select "the least environmentally adverse alternative" (Pet. 30). This reading of NEPA, however, is in reality a blueprint for complete stasis, and is plainly not the law. Virtually every environmental impact statement ever prepared considers, as one alternative to the proposed action, the possibility of doing nothing; but "doing nothing"—although frequently the "least environmentally adverse alternative" to the proposed federal action—is clearly not required by NEPA. Indeed, in *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 558 (1978), this Court held that NEPA's mandate to the agencies is "essentially procedural," and in *Strycker's Bay Neighborhood Council, Inc. v. Karlen*, 444 U.S. 223, 227 (1980), the Court emphasized that NEPA does not require an agency, in selecting a course of action, to elevate environmental concerns over other appropriate considerations. These holdings, dismissed by the petitioners as obiter dictum (Pet. 26), were expressly followed by the courts below, and compel the conclusion that petitioners' numerous contentions are completely without merit.

1. Petitioners contend (Pet. 10-19) that they were "unlawfully denied an opportunity to challenge the adequacy of the [F]EIS prepared by the Corps" because they were not allowed to present evidence to supplement or contradict the FEIS. The decisions of the district court and the court of appeals, however, merely apply the settled rule that when administrative proceedings—including proceedings involving the preparation and adequacy of NEPA statements—are the subject of judicial review, the adequacy of the agency action must be determined on the basis of the administrative record already in existence, and not some new record made initially in the reviewing court. *Camp v. Pitts*, 411 U.S. 138 (1973); *Upper West Fork River Watershed Ass'n v. Corps of Engineers*, 414 F. Supp. 908 (N.D.W.Va. 1976), aff'd, 556 F.2d 576 (4th Cir. 1977), cert. denied, 434 U.S. 1010 (1978).

Petitioners suggest that the Second Circuit has held otherwise (*County of Suffolk v. Secretary of the Interior*, 562 F.2d 1368 (1977), cert. denied, 434 U.S. 1064 (1978)), and assert that there is a conflict among the circuits that warrants this Court's attention (Pet. 14). But, contrary to petitioners' submission, the Second Circuit's *County of Suffolk* decision did not hold that the introduction of evidence in the district court is proper or desirable whenever the adequacy of an FEIS is challenged. Rather, the court held only that a district court's ruling allowing the submission of evidence was not necessarily improper. The court, moreover, emphasized (562 F.2d at 1385) that "evidence introduced for the first time in the district court * * * would be probative only insofar as it tended to show either that the agency's research or analysis was clearly inadequate or that the agency improperly failed to set forth opposing views widely shared in the relevant scientific community." In this case, the FEIS sets forth the relevant research and opposing views fully and candidly; petitioners' grievance is simply

that the agency did not accept the opposing views.⁴ Consequently, there is no need here for the introduction of additional testimony like that which was permitted in *County of Suffolk*, and that decision is entirely compatible with the holding in the instant case.

2. Petitioners contend that since there are "genuine issues of material fact in dispute regarding the adequacy of the [F]EIS and regarding whether the Corps acted in good faith in preparing it" (Pet. 19), the district court's entry of summary judgment was in error. However, petitioners' assertion that "genuine issues of material fact" remain in this litigation is plainly incorrect. To be sure, whether or not the FEIS is adequate *is* in dispute, but the text of the FEIS itself *is not* in dispute. And, it is eminently within the purview of the district court to determine, upon a motion for summary judgment, whether the text of the FEIS is "adequate."

The FEIS in the instant case exhaustively considers all of the alleged possibilities of environmental and economic harm cited by petitioners. See Pet. 19-26. The environmental and sociological pros and cons of the proposed activity are discussed at length. The mere fact that the ultimate conclusion reached by an FEIS may be earnestly debated, as petitioners do here, in no way precludes the entry of

*The Pennsylvania Game and Fish Commission, for instance, opposed issuance of the permit, and petitioners argued in the district court that the final decision to issue the permit was wrong because the Pennsylvania agency recommended against it (Pet. App. A-174). To this objection, the district court responded (Pet. App. A-175):

The fact that the Pennsylvania Game and Fish Commission opposed issuance of the permit does not mean that the Corps did not give "full consideration" or "great weight" to the views of that agency. It only shows that they gave greater weight to the views of the majority of the agencies and experts which studied the effects the plant would have on wildlife.

summary judgment in a NEPA case. So long as it is clear, as it is here, that the federal agency that made the ultimate conclusion set forth in an FEIS was aware of all relevant conflicting viewpoints, and made its decision with full knowledge of those disputes, the underlying goal of NEPA has been achieved. See *Strycker's Bay Neighborhood Council, Inc. v. Karlen, supra*, 444 U.S. at 227 (NEPA requires "hard look" at environmental consequences of federal action but does not impose substantive limitations on that action).

3. Petitioners also challenge (Pet. 23-26) the good faith of the Corps in issuing the FEIS in this case. The "two factual bases" (Pet. 23) for petitioners' assertion of bad faith, however, even if true (which we here assume arguendo solely for the purpose of showing their legal irrelevancy) do not in any way support a legal conclusion of bad faith.

The first supposed "factual basis" for the Corps' bad faith rests upon petitioners' allegation that United States Steel intends eventually to build a larger plant than the one for which the FEIS was prepared. But an impact statement must address only the action actually proposed—not one that may be merely contemplated. *Kleppe v. Sierra Club*, 427 U.S. 390, 406 (1976); *Weinberger v. Catholic Action of Hawaii*, 454 U.S. 139, 146 (1981). If the steel plant is ever expanded, such federal actions as may be required in connection with that expansion will at that time be subject to NEPA. See *Kleppe v. Sierra Club, supra*, 427 U.S. at 410 n.20 ("Should contemplated actions later reach the stage of actual proposals, impact statements on them will take into account the effect of their approval upon the existing environment; and the condition of that environment presumably will reflect earlier proposed actions and their effect").

The other purported evidence of the Corps' bad faith is that the "vast majority" of the information in the FEIS was supplied by United States Steel (Pet. 25). This revelation,

however, is hardly surprising. The plant, if it is ever built, will be built to specifications established by United States Steel, and it is from United States Steel, accordingly, that information with respect to its plans must come. An FEIS, after all, is a source document for the making of an informed decision; in a situation such as the one presented here, there can be no better source of information regarding the size, scope, and operations of a steel plant than the steel company itself. See *Sierra Club v. Lynn*, 502 F.2d 43, 59, reh'g denied, 504 F.2d 760 (5th Cir. 1974), cert. denied, 421 U.S. 994 (1975).

Of course the evaluation of appellant's information, and the agency decision whether to issue the requested permit, is another matter. But nothing in the record would support a contention that the Corps failed conscientiously and in good faith to make an informed and reasoned decision after consideration of all points of view as reflected in the exhaustive record. *Life of the Land v. Brinegar*, 485 F.2d 460, 467 (9th Cir. 1973), cert. denied, 416 U.S. 961 (1974). The record clearly reveals that while certain technical data (such as the location and size of the plant, the manufacturing processes to be used and the immediate physical consequences of those processes) came principally from United States Steel, the Technical Team established to produce the FEIS actively and critically reviewed that material, and in numerous instances required additional information and further independent studies.

4. Petitioners contend (Pet. 39) that the Corps failed to consider "cost data." Exactly what those "cost data" are, however, the petitioners do not say. The argument made by the petitioners below, and apparently now abandoned in favor of something more nebulous and therefore less easily refuted, is that the Corps failed to specifically balance the costs and benefits of the proposed project. But, notwithstanding petitioners' protestations, a formal cost-benefit

analysis is not required by NEPA. Where the advantages and disadvantages of a project are fully discussed in the FEIS, the failure to affix numerical weights to each of these does not make the FEIS inadequate. *Cady v. Morton*, 527 F.2d 786, 797 (9th Cir. 1975).⁵

5. Petitioners assert (Pet. 39-40) that partial alternatives to the proposed plant were not considered. Again, the petitioners do not define "partial alternatives," but whatever such alternatives might include, it is difficult to imagine that they would differ in essence from, or not be included within, the many alternatives that were considered during the preparation of the FEIS. As the district court found (Pet. App. A-154):

The [F]EIS devotes 130 pages to the consideration of alternatives to the proposed project. These alternatives include no action, rearrangement of plant layout, alternative process units, alternative plant operation concepts, alternative sites, alternative processes, alternative ancillary facilities, alternative solid waste management systems, alternative operation and maintenance methodologies, alternative intake and discharge systems, alternatives to the original proposal to fill and divert Turkey Creek, and alternative pier extension and dock design[s]. Alternative "Brownfield" sites in Chicago, Illinois, Gary, Indiana, Youngstown and Lorain, Ohio were considered. Greenfield sites along the Great Lakes Shoreline in Indiana, Illinois, New York, Ohio and Pennsylvania were studied. All were

⁵In any event, cost-benefit analyses, helpful as they are when the costs are paid by and the benefits inure to governmental entities and their constituents, are of less significance when the costs are paid by private parties (here United States Steel) while the benefits are evaluated not from the point of view of the private entrepreneur, but from the point of view of the community in general.

rejected because the Corps determined that, although feasible for some degree of industrial expansion, they offered no advantage over the Conneaut site due to social, economic and environmental problems.

6. Petitioners contend (Pet. 42) that the Corps failed to give sufficient consideration in the FEIS to the Agreement on the Great Lakes Water Quality, Nov. 22, 1978, United States-Canada, 30 U.S.T. 1383, T.I.A.S. No. 9257. As the district court noted, however, the FEIS referred to the terms of the agreement, discussed how compliance with the agreement would be enforced, and, after comparing the predicted discharge of the planned steel mill with the standards set forth in the agreement, concluded that the proposed activity was consistent with the agreement (Pet. App. A-167 to A-168). NEPA requires nothing more.⁶

7. Petitioners contend (Pet. 43) that the FEIS did not address the environmental impacts of expanding a raw materials handling facility owned by the Pittsburgh and Conneaut Dock Company, a subsidiary of United States Steel, in Conneaut Harbor. The district court found otherwise (Pet. App. A-165), and cited the specific pages on which these impacts were discussed. It is clear that in this respect, as in the others above, the FEIS fulfilled its statutory function of bringing to the attention of the decision-makers the possible environmental consequences of their proposed action.

8. Petitioners' allegation (Pet. 44-45) that the Corps did not consider the effects of potential air and water pollutants on local vineyards, plant nurseries, and aquatic species in Lake Erie is palpably incorrect. Pages 5917-5919 and

⁶Major responsibility for the implementation of the agreement, moreover, has been assigned to an international joint commission. The comments of that commission were solicited, but none were received.

5927-5931 of the record filed in the court of appeals⁷ contain in narrative form a summary of and index to those portions of the FEIS where these matters were considered.

9. Petitioners contend (Pet. 46-53) that United States Steel failed to obtain a valid certification from either Ohio or Pennsylvania, as required by Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. (& Supp. V) 1341. But, as the district court held (Pet. App. A-160), United States Steel has acquired the necessary certification from the State of Ohio, where the discharge pipe is located, and does not need a separate certification from the State of Pennsylvania.⁸

10. Finally, petitioners contend (Pet. 53-57) that the Corps violated the letter and spirit of the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*, by giving little weight to the views of the federal and state wildlife agencies. The Corps, however, clearly effected the coordination required by the Coordination Act. See C.A. App. 3756-3838, 3839-4047. Indeed, the Corps issued the permit on the condition that (C.A. App. 5858):

[t]he permittee will implement the fish and wildlife management plan for the Lake front site as defined in the final EIS and the December 1978 report prepared by Fahringer, McCarty, Grey, Inc. [A. V, 2146-2196].

⁷The record submitted to the court of appeals by the petitioners comprised 6,071 pages.

⁸That the State of Ohio has issued the necessary certification has been conclusively determined by litigation in state court (*Lake Erie Alliance v. McAvoy*, No. EBR 79-63 (Jan. 4, 1980), aff'd, No. 80AP 105 (Franklin Co. Ct. App., Ohio, Aug. 28, 1980), cert. denied, (Dec. 18, 1980)), and that Pennsylvania is not required under the Federal Water Pollution Control Act to provide certification under Section 401 has been determined by the General Counsel of the Environmental Protection Agency (Op. Gen. Counsel No. 78-8, at 407 (Apr. 19, 1978)).

The permittee will coordinate with the Pennsylvania Fish and Game Commissions and the Ohio Department of Natural Resources during the implementation of this plan.⁹

In the final analysis, this case reflects petitioners' profound distress over the fact that the Corps has authorized the construction of a plant that they, for a variety of reasons, oppose. Because many of the petitioners' reasons for contesting the construction of the plant are not environmental (some of the petitioners, for example, are steel-workers in Pittsburgh who fear that they might lose their jobs if the new plant is built), no degree of attention given to the purely environmental aspects of the construction and operation of the plant will ever completely satisfy their objections. The very fact that the environmental impact statement prepared in this case is so comprehensive, involves so many facts and opinions, and is so long (3,470 pages) ensures that those who oppose the ultimate agency action can—with relative ease—find points to dispute, issues to rake over, and uncertainties to dwell upon. The issues thus raised, however, are not factual, but rather go to the conclusions to be drawn from the text of the FEIS. This "controversy of experts," so common in NEPA cases, is one that courts properly decline to enter. *Manygoats v. Kleppe*, 558 F.2d 556, 560 (10th Cir. 1977).

⁹In any event, there can be no question that the Corps complied with NEPA, and as was stated in *Cape Henry Bird Club v. Laird*, 359 F. Supp. 404, 418 (W.D. Va.), aff'd, 484 F.2d 453 (4th Cir. 1973), compliance with NEPA is de facto compliance with the coordination requirements of the Fish and Wildlife Coordination Act.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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APPENDIX A

DEVELOPMENT OF THE ADMINISTRATIVE RECORD

The first duties of the Technical Team included review and evaluation of the Corps' "Guide to the Preparation of the Environmental Impact Assessment for New Source Fossil Fuel Power Plants Requirng a Department of the Army Permit," the environmental assessment outline prepared by A.D. Little, and the scope of on-site data collection required in order to assure that the initial environmental assessment developed for the site would be adequate for a FEIS.¹ Public notice for the proposed work was issued March 11, 1977.² The Corps also issued a press release describing the project.³

On March 15, 1977, the Technical Team met at the offices of U.S. Steel in Pittsburgh, to discuss agency concerns with U.S. Steel and A.D. Little.⁴ The U.S. Fish and Wildlife Service agreed to initiate a fish sampling program for the creeks and streams in the project area and in the shallow waters of Lake Erie adjacent to the plant site. The State of Ohio provided technical input on issues related to air quality and project plan mitigation. The Commonwealth of Pennsylvania provided baseline data and written comments outlining concerns in the realm of secondary impacts. The Corps provided the data and format requirements for the environmental impact assessment as a whole. The Technical Team requested a definitive project description from U.S. Steel so that agency input could be refined and sound mitigation measures developed.

¹AR, Vol. 1.

²A 1-11.

³AR, Vol. 1.

⁴AR, Vol. 2.

Shortly thereafter, the Technical Team notified U.S. Steel that the assessment format did not conform to Corps requirements, that on-site archaeological and cultural resources had to be initiated with dispatch, that extensive species lists should be limited to those actually generated during data collection, that aquatic field studies should address agency criteria for intake and discharge structure siting, and that a section on secondary "spin-off" impacts should be included.⁵

The Technical Team met at the offices of A.D. Little in Cambridge, Massachusetts, on March 29, 1977, to provide U.S. Steel and A.D. Little with further guidance for preparation of the environmental assessment and to resolve other matters relating to the proposed project.⁶ Representatives of A.D. Little provided a revised outline for the environmental assessment which was generally acceptable.

On April 1, 1977, leaders of various governmental regulatory agencies, including representatives from the Corps, EPA, U.S. Fish and Wildlife Service, State of Ohio, Commonwealth of Pennsylvania, and U.S. Steel met in Conneaut, Ohio, for a briefing on the status of environmental impact studies for the proposed project.⁷ A tour of the proposed plant site followed the meeting.

The Technical Team met on April 5, 1977, at EPA offices in Chicago, Illinois, to discuss air quality issues related to the proposed mill.⁸ The participants agreed that a description of the plant process equipment was necessary in order to fully model atmospheric emissions from the proposed

⁵AR, Vol. 2.

⁶AR, Vol. 2.

⁷AR, Vol. 2.

⁸AR, Vol. 5.

facility. The use of three months of on-site data combined with existing information was deemed sufficient for the FEIS. U.S. Steel was directed to continue the data collection process to test the validity of certain predictions and conclusions. The participants agreed to address the effect of plant emissions on the grape industry in Western New York, Pennsylvania, and Ohio as a specific issue. EPA staff agreed to provide A.D. Little specialists with information on the effect of atmospheric emissions on agricultural crops and natural vegetation. In addition, A.D. Little agreed to prepare a revised air quality program for benz-a-pyrene and fluorides.

The following day the Team met to discuss the proposed work plan for performance of aquatic and terrestrial sampling at the proposed site.⁹ U.S. Steel was also advised to develop mitigatory and alternative plans vis-a-vis the filling of Turkey Creek, using assistance from the Technical Team. The Team also discussed other topics, such as establishment of a mixing zone (800-foot diameter), spawning habitat and aquatic sampling periods, and placement of the intake structure.

A notice was issued on April 15, 1977, that a public hearing would be held in Conneaut, Ohio, on May 16, 1977, to discuss the Conneaut project in detail.¹⁰

The Technical Team met in Conneaut, Ohio, on April 14 and 15, 1977, to again inspect the proposed plant site. The purpose of the meeting was to identify environmentally-sensitive areas within the site boundary, recommend alternative or mitigative courses of action that could be employed to significantly lessen environmental impact, review field sampling proposals, and delineate those areas subject to regulation under Section 404 of the Clean Water Act. The

⁹AR, Vol. 5

¹⁰AR, Vol. 2.

concerns and recommendations of the various agency representatives were summarized and sent to U.S. Steel.¹¹ The company response followed.¹²

A.D. Little sponsored a workshop on April 19, 1977 to acquaint community officials, as well as local and regional planning personnel, with procedures for analysis of environmental impacts. The Corps staff participated in the session. Topics of discussion included air quality, aquatic ecology, geology, hydrology, and socioeconomics.¹³

Thereafter, the Corps requested U.S. Steel to evaluate several issues raised during the public interest review, including the effect of plant emissions on agricultural crops and native vegetation, plant-induced secondary growth and development, placement of fill in Turkey Creek, discharge of plant effluents into the littoral zone of Lake Erie, loss of ichthyoplankton associated with the operation of the plant intake, and the need for an erosion control plan during construction and subsequent operation of the proposed mill.¹⁴

Throughout the administrative process all written comments received on the project were regularly sent to U.S. Steel for review, evaluation, and comment, as required by 33 CFR § 325.2(a)(3).

The Technical Team met on April 25, 1977, in Philadelphia, Pennsylvania, to discuss the modeling procedures for secondary impact evaluation and to provide an opportunity for agency officials to identify the socioeconomic impact issues involved in the project.¹⁵ Topics of discussion

¹¹AR, Vol. 3.

¹²AR, Vol. 10.

¹³AR, Vol. 3.

¹⁴AR, Vol. 3.

¹⁵AR, Vol. 5.

included potential increases in carbon monoxide levels at highway intersections near the proposed plant, information gaps in the baseline data that could affect the output of the SIMPACT IV model, and the need to identify highway interchanges that would improve traffic flow in the vicinity of the Lakefront plant.

The Corps then prepared a public affairs plan and fact sheet for distribution throughout the regional impact area.¹⁶ Several public workshops were also conducted.¹⁷ A toll-free telephone line was established on May 24, 1977, so that area residents could speak to the Corps staff directly on matters pertaining to the proposed mill.

On May 2, 1977, U.S. Steel furnished revised terrestrial and aquatic sampling proposals to the Technical Team.¹⁸ On this same date, the Technical Team met to discuss issues pertaining to the geologic and hydrologic characteristics of the proposed steel plant site.¹⁹ The team met again May 11 and 12, 1977, to discuss air and water quality issue.²⁰

A public hearing was held in Conneaut, Ohio, on May 16, 1977. Issues raised during the hearing included the effect of plant emissions on agricultural and native vegetation, secondary growth and development, placement of fill in Turkey Creek, loss of aquatic and terrestrial habitat, discharge of waste effluents into the Lake Erie littoral zone, potential loss of ichthyoplankton during the operation of the water intake and entrainment of adult fish species on the intake heads, and need for development of a suitable on-site

¹⁶AR, Vol. 6.

PVAR, Vols. 5, 6, 11, 12.

PWAR, Vol. 6.

PXAR, Vol. 8.

QYAR, Vol. 10.

erosion control plan, energy, and unemployment in the Conneaut area. Hearing files were established in Buffalo, Cleveland, and Conneaut, Ohio.

On May 20, 1977, the Corps requested information from EPA regarding Federal and State standards for sulfur dioxide emissions.²¹ The EPA responded on June 2, 1977.²²

On May 25 and 26, 1977, a series of technical conferences were held at EPA offices in Philadelphia to discuss use of the SIMPACT model, secondary socioeconomic effects, air, noise, and water quality impacts, and transportation needs.²³

On May 27, 1977, the Corps announced that additional public hearings would be held in Erie, Pennsylvania, on June 29, 1977, and Ashtabula, Ohio, on June 30, 1977.²⁴ An additional hearing file was established in Erie, Pennsylvania.

On June 9, 1977, the Technical Team met in Pittsburgh to resolve administrative and technical problems relating to review of the permit application. Topics of discussion included actions which could delay or prohibit issuance of the permit, storm and surface water runoff, solid waste, shoreline discharge of waste effluents, Technical Team coordination, agency data requirements, and alternatives to the diversion and filling of Turkey Creek. The A.D. Little staff also provided a status report on data collection and preparation of their environmental report.²⁵ The Technical Team met again on June 25, 1977 to evaluate the data

²¹AR, Vol. 10.

²²AR, Vol. 10.

²³AR, Vol. 10.

²⁴AR, Vol. 10.

²⁵AR, Vol. 12.

contained in the effluent and emission inventories prepared by U.S. Steel.²⁶

On June 23, 1977, the Corps forwarded a letter to U.S. Steel requesting prompt answers to questions raised by the Concerned Citizens organization at a workshop held in Conneaut, Ohio, on June 21, 1977.²⁷ Issues raised in this correspondence included the need for a 72-inch diameter intake pipeline, the rationale for facility need, the potential for shutdown of existing plants if the Lakefront mill proceeded into operation, contingency plans for oil spills or the failure of pollution control equipment, and the effect of plant emissions on agricultural crops, nursery stock, and native vegetation. Detailed responses to each inquiry were provided by U.S. Steel on July 15, 1977.²⁸

On June 24, 1977, the Technical Team convened to evaluate the field data collection effort by Aquatic Ecology Associates, Inc. and to identify ways in which the existing sampling program could be improved.²⁹ During this meeting, guidance was provided concerning the establishment of a baseline for stormwater runoff and the measurement of priority pollutant levels in fish tissue.

On June 27, 1977, U.S. Steel transmitted completed copies of an EPA questionnaire dealing with water related issues to each member of the interagency Technical Team.³⁰ EPA had initially requested completion of the questionnaire at the June 15, 1977 Technical Team meeting.

²⁶AR, Vol. 12.

²⁷AR, Vol. 12.

²⁸AR, Vol. 12.

²⁹AR, Vol. 12.

³⁰AR, Vol. 12.

The Corps later sent letters to U.S. Federal Regional Council in Chicago, Illinois, and Philadelphia, Pennsylvania, requesting a list of applicable permits that must be secured prior to construction and operation of the proposed steel mill. Similar correspondence was forwarded to the Ohio EPA and the Commonwealth of Pennsylvania.³¹

The Technical Team met on June 29, 1977, to examine solid waste disposal problems relating to the proposed steel facility.³² Discussion centered on landfill availability in the vicinity of the proposed plant, recycling of solid wastes, soil characteristics and groundwater resources of the Lakefront site, and methods of solid waste disposal.

Additional public hearings were held in Erie, Pennsylvania, and Ashtabula, Ohio. Topics of concern included the effect of plant related emissions' on agricultural and native vegetations, secondary growth and development impacts, Turkey Creek and potential loss of aquatic and terrestrial habitat, erosion control, formation of a greenbelt surrounding the plant, labor supply and unemployment, credibility of information supplied by U.S. Steel, adverse social impact, and possible Federal funding for municipal water supplies.

Corps representatives later met with U.S. Steel and A.D. Little to review the outline for their environmental report. Format requirements for the assessment were also established during this meeting.³³ Corps representatives also attended a public forum sponsored by the State of Ohio.³⁴

³¹AR, Vol. 12.

³²AR, Vol. 17.

³³AR, Vol. 16.

³⁴AR, Vol. 16.

During the review process, U.S. Steel regularly distributed progress reports on the Aquatic Ecology Associates, Inc. field sampling effort to members of the interagency Technical Team. The results contained in each interim document were eventually compiled into a single two volume document.³⁵ Copies of the interim and final reports were also placed in each of the designated hearing files. Responses to the request for applicable permit lists were received from the Commonwealth of Pennsylvania, Ohio EPA, and the FRC.³⁶

The Technical Team met on July 29, 1977 to discuss Best Available Control Technology (BACT) and Lowest Achievable Emission Rates (LAER) requirements for the proposed mill.³⁷

During the first week of August 1977, representatives of the Corps toured those U.S. Steel plants in Alabama and Texas utilizing processes and pollution control technology similar to those proposed for the Conneaut Plant.

Corps representatives attended a public meeting conducted by EPA in Conneaut, Ohio, on August 3, 1977.³⁸

As they were completed, draft portions of the A.D. Little environmental assessment were forwarded to the Corps and the interagency Technical Team for independent review and comment. This procedure began on August 4, 1977, and continued until January 6, 1978, when the final section of the draft was received from U.S. Steel. At the same time, A.D. Little evaluated Technical Team comments and incorporated them into its final environmental assessment.

³⁵AR, Vol. 99.

³⁶AR, Vol. 17, 18.

³⁷AR, Vol. 18.

³⁸AR, Vol. 18.

which U.S. Steel transmitted to the Corps on July 5, 1978. Copies of the draft and final assessments were placed in each of the designated hearing files.

On August 8, 1977 the Corps furnished U.S. Steel with a list of the regulatory permits required for the proposed mill.³⁹

The Technical Team also met to discuss Best Available Demonstrated Technology (BADT) guidelines and to review modeling techniques used to predict plant related impacts on air quality.⁴⁰

On August 16, 1977, the District Engineer requested that certain Federal, State, and local agencies review the U.S. Steel proposal to determine the degree of conformance with the objectives and specific terms of existing or proposed land use plans, policies, and controls.⁴¹

The August 29, 1977, response from Ashtabula County indicated that the proposed development was compatible with land use plans through the year 2000.⁴² On August 31, 1977, the Mayor of Conneaut responded by providing copies of the city zoning map and applicable ordinances.⁴³ The September 8, 1977, response from the Pennsylvania State Office of Planning and Development described several planning strategies that would be used to evaluate the U.S. Steel proposal.⁴⁴

³⁹AR, Vol. 18.

⁴⁰AR, Vols. 18, 20.

⁴¹AR, Vol. 18.

⁴²AR, Vol. 22.

⁴³AR, Vol. 22.

⁴⁴AR, Vols. 28, 29, 30.

On August 17, 1977, the Corps met with representatives of Erie County, Pennsylvania, agricultural groups to discuss the U.S. Steel proposal. Major concerns identified during this session included the potential loss of farmland as a result of plant-induced growth and development and the effect of plant emissions on crops and nursery stock. The meeting concluded with a tour of area farming districts.

The Corps sent the Technical Team copies of the transcripts and written comments from the June 29 and 30 hearings.

The Corps retained the services of Dr. Brian J.L. Berry, Director of the Laboratory for Computer Graphics and Spatial Analysis, Graduate School of Design, Harvard University, Cambridge, Massachusetts, to review and evaluate the A.D. Little analysis of plant related socioeconomic impacts.

On August 30, 1977, the Technical Team met in Chicago, Illinois, to continue discussions relating to the plant emissions inventory and BACT/LAER requirements.⁴⁵

The Corps requested that U.S. Steel develop a study to determine the effect of plant related emissions on native vegetation, nursery stock, and agricultural crops. A copy of an August 30, 1977, letter from Donald D. Davis, Associate Professor, Pennsylvania State University, was included with this correspondence.⁴⁶

On September 9 and 10, 1977, representatives of the Corps attended public meetings sponsored by the Sierra Club in Cleveland, Ohio, and Erie, Pennsylvania, that included a presentation by Stewart Udall, former Secretary of the Department of the Interior.⁴⁷

⁴⁵AR, Vol. 27.

⁴⁶AR, Vol. 27.

⁴⁷AR, Vol. 30.

On September 12, 1977, U.S. Steel advised the Corps that the plant discharge structure would be moved to an offshore location, to minimize impacts on the aquatic biota.⁴⁸ At a meeting in Cambridge, Massachusetts, on September 20, 1977, Dr. Brian Berry was briefed on the SIMPACT models used by A.D. Little to identify and define certain environmental impacts associated with the construction and operation of the proposed mill.⁴⁹

The Technical Team met on September 23, 1977, to identify and resolve issues that could delay the completion of the A.D. Little environmental reports.⁵⁰ Items of discussion included the lack of agreement on BACT/LAER limitations and the A.D. Little rationale for plant emissions, overdue field reports, and the need for viable alternatives to the placement of fill in Turkey Creek.

The Corps transmitted the cultural resource survey of the Lakefront site to the National Park Service and the State Historic Preservation Officers for review on September 26, 1977.⁵¹ Responses were received on November 25, 1977.⁵²

Between September 28, 1977 and January 10, 1978, comments on the SIMPACT model and the A.D. Little socioeconomic impact analysis provided by the Corps' consultant, Dr. Brian J.L. Berry, were transmitted to U.S. Steel for review and evaluation. A final report critiquing the overall socioeconomic impact assessments for the proposed steel plant was furnished by Dr. Berry on March 15, 1978.⁵³

⁴⁸AR, Vol. 30.

⁴⁹AR, Vol. 35.

⁵⁰AR, Vol. 35.

⁵¹AR, Vol. 35.

⁵²AR, Vol. 45.

⁵³AR, Vol. 65.

The Technical Team met on October 3 and 12, 1977, to continue discussions relating to plant emissions inventory and BACT/LAER requirements.⁵⁴

On October 3-5, 1977, representatives of the U.S. Fish and Wildlife Service, Pennsylvania Fish and Game Commissions, and the Ohio Department of Natural Resources, conducted a field survey of the Turkey Creek watershed. The purpose of this investigation was to identify alternative, mitigative, or compensatory actions that would lessen the impacts associated with the filling and diversion of Turkey Creek.⁵⁵

Colonel Daniel D. Ludwig addressed the Northwest Pennsylvania Futures Committee on October 5, 1977. Colonel Ludwig discussed Corps involvement in the proposed U.S. Steel project.

In response to a request from the Concerned Citizens of Conneaut, Ohio, the Corps extended the comment period on the DEIS from 45 to 90 days.⁵⁶

On October 25, 1977, copies of the "Final Report on the Discriminatory Archaeological Analysis of Erie and Crawford Counties, PA and Ashtabula County, OH" prepared by A.D. Little were distributed to the National Park Service and the State Historic Preservation Officers for review.⁵⁷ The National Park Service responses transmitted to the Corps on November 11, 1977, and November 28, 1977, indicated that this document was of significant value as a planning tool for reconnaissance-level investigations.⁵⁸

⁵⁴AR, Vols. 36, 37.

⁵⁵AR, Vol. 36.

⁵⁶AR, Vol. 38.

⁵⁷AR, Vol. 38.

⁵⁸AR, Vols. 43, 45.

Representatives of the Pennsylvania Fish and Game Commissions, Ohio Department of Natural Resources, U.S. Fish and Wildlife Service, and the Corps met on October 27, 1977, to discuss potential compensation measures for the loss of Turkey Creek.⁵⁸

The Technical Team met on November 1, 1977, to discuss comments on the SIMPACT model provided by Dr. Berry, on November 7, 1977, to discuss the A.D. Little memorandum on worst case scenarios for air quality modeling, and on December 15 and 16, 1977, to review the socioeconomic portion of the A.D. Little draft assessment.⁶⁰

On November 9, 1977, representatives of the Ohio Department of Natural Resources met with U.S. Steel to present the State of Ohio position on the filling and diversion of Turkey Creek.⁶¹ Representatives of U.S. Steel met with the Corps on December 29, 1977, to review coordination procedures to be followed during preparation of the DEIS.⁶² U.S. Steel agreed to submit revised drawings, which were received by the Corps on February 6, 1978.⁶³

On February 1, 1978, the Corps requested that the Springfield Township Zoning Office review the U.S. Steel proposal to determine the degree of conformance with the objectives and specific terms of existing or proposed land use plans, policies, and controls.⁶⁴ The Erie County Metropolitan Planning Commission responded on behalf of

⁵⁸AR, Vols. 43, 45.

⁵⁹AR, Vol. 41.

⁶⁰AR, Vol. 44, 43, 55.

⁶¹AR, Vol. 43.

⁶²AR, Vol. 58.

⁶³AR, Vols. 55, 58.

⁶⁴AR, Vol. 58.

Springfield Township Zoning Office. Their correspondence, dated February 7, 1977, contained zoning and subdivision ordinances of Springfield Township and East Springfield Borough and a status report on regulating plans and controls for Girard Township and the Boroughs of Girard, Lake City, Albion, and Cranesville.⁶⁵

The DEIS was filed with EPA on May 23, 1978. At the same time, copies of this document were forwarded to Federal, State, and local agencies, environmental groups, public libraries, and interested individuals for review.⁶⁶ A notice of availability was also widely distributed throughout the regional impact area.⁶⁷ Additional copies of the DEIS and the 19-page summary of this document were provided to individuals on request.⁶⁸

The public review period for the DEIS began on June 5, 1978, the date the notice of receipt by the EPA was filed in the Federal Register.⁶⁹

The Corps issued a Public Notice on June 8, 1978, announcing the schedule for hearings on the U.S. Steel proposal.⁷⁰ Public hearings were held in Conneaut, Ohio (July 11, 1978), Erie, Pennsylvania (July 25, 1978), Ashtabula, Ohio (August 14, 1978), and West Springfield, Pennsylvania (August 22, 1978). Significant issues raised during these hearings were addressed in the FEIS.

On June 13, 1978, the Corps requested that the U.S. Department of Agriculture Soil Conservation Service determine the existence of prime or unique farmlands on the

⁶⁵AR, Vol. 59.

⁶⁶AR, Vol. 66.

⁶⁷AR, Vol. 66.

⁶⁸AR, Vol. 66.

⁶⁹AR, Vol. 68.

⁷⁰AR, Vol. 68.

proposed Lakefront Plant site.⁷¹ The Soil Conservation Service response of July 18, 1978 indicated that approximately 70 percent of the Ohio portion of the Lakefront site is classified as prime farmland and that no unique farm-lands were present within the project area.⁷²

During the DEIS comment period, the Corps staff participated in the following public information workshop: June 14, 1978, workshop sponsored by the Conneaut Chamber of Commerce; June 26, 1978, workshop sponsored by the County of Erie, Pennsylvania; June 27, 1978, workshop sponsored by Ashtabula Chamber of Commerce; and June 28, 1978, workshop sponsored by Albion Chamber of Commerce. Topics of discussion included population, taxes, land use, and air and water quality.

On August 14, 1978, the Corps issued a press release advising the public that the review period for the DEIS would not be extended beyond the September 8, 1978, deadline.⁷³ The Corps transmitted a letter of explanation to local governmental officials and representatives of area environmental groups on August 17, 1978.⁷⁴

On July 11, 1978, the Corps requested that U.S. Steel forward copies of the A.D. Little report entitled "Report on the Environmental Impacts of the U.S. Steel Corporation's Proposed Lakefront Plant" to each member of the interagency Technical Team and to the public libraries in Erie, Pennsylvania, and Conneaut, Ohio, and the Corps office in Cleveland, Ohio. U.S. Steel complied with this request on July 18, 1978.

⁷¹AR, Vol. 68.

⁷²AR, Vol. 94.

⁷³AR, Vol. 96.

⁷⁴AR, Vol. 96.

Representatives of the Corps participated in panel discussion of the U.S. Steel proposal televised by WICU-TV and WSEE-TV of Erie, Pennsylvania. Some of these broadcasts were "live" and others were taped for later broadcast during the summer and fall of 1978. Corps staff also participated in a panel discussion broadcast by WFUN-AM radio of Ashtabula, Ohio.

On August 8, 1978, representatives of various sport clubs, State and Federal agencies, and U.S. Steel met in Conneaut, Ohio, to discuss treatment of Turkey Creek.⁷⁵

The comment period for the DEIS ended September 8, 1978. On the same day, the Technical Team met to discuss air quality issues relating to the combined effect of emissions from the proposed COHO power plant and the U.S. Steel Lakefront facility.⁷⁶

On November 30, 1978, the EPA indicated that the A.D. Little analysis of combined emission impacts was adequate for the purposes of the FEIS.⁷⁷

The Federal Regional Council sponsored a meeting on September 13, 1978, to discuss comments on the population projections presented in the DEIS.⁷⁸

The Corps sent copies of the comments received during the DEIS review period to U.S. Steel for comment and response and to Technical Team members, local officials and area libraries.⁷⁹ It also issued a notice advising the public that an information meeting on the U.S. Steel proposal would be held in Conneaut, Ohio, on October 18,

⁷⁵AR, Vol. 96.

⁷⁶AR, Vol. 99.

⁷⁷AR, Vol. 111.

⁷⁸AR, Vol. 110.

⁷⁹AR, Vol. 110.

1978.⁸⁰ During this meeting, agency officials presented their comments on the DEIS and answered questions from the general public. Additional comments were sent to U.S. Steel on September 28, 1978, and November 14, 1978.⁸¹

On October 11, 1978, the Mid-Atlantic Federal Regional Counsel advised the Corps that the proposed U.S. Steel project was consistent with the goals of the President's national urban policy.⁸²

The Technical Team met October 16, 1978, to identify and evaluate viable alternatives to the filling and diversion of Turkey Creek.⁸³ In addition to the Corps, representatives of the following agencies participated in the session: U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Ohio Environmental Protection Agency, Ohio DNR, Pennsylvania Department of Environmental Resources, Pennsylvania Fish Commission, Ashtabula County Planning Commission, Erie County Health Department, and the City of Conneaut.

On November 2, 1978, U.S. Steel transmitted a revised proposal for harbor pier construction to the District Engineer for evaluation.⁸⁴ This information was transmitted to Federal, State, and local agency representatives for review on November 14, 1978.⁸⁵

The Corps requested U.S. Steel to review the possibility that operation of the Lakefront plant could require the addition of activated charcoal filters to the City of Erie

⁸⁰AR, Vol. 110.

⁸¹AR, Vols. 110, 111.

⁸²AR, Vol. 110.

⁸³AR, Vol. 111.

⁸⁴AR, Vol. 111.

⁸⁵AR, Vol. 111.

water treatment system.⁸⁶ In addition, U.S. Steel was provided a copy of the minutes of the Federal Regional Council meeting of September 13, 1978, with instructions to respond to each of the issues identified. The Corps also requested the Commonwealth of Pennsylvania to furnish minutes of a meeting addressing on-site mitigation and a copy of the report of Dr. Milo Bell, the Commonwealth's consultant, on the subject of mitigation.⁸⁷

On November 17, 1978, the Corps staff met with representatives of the League of Women Voters of Erie County to discuss environmental issues related to the construction and operation of the proposed plant.⁸⁸ Topics of concern included plant-induced secondary growth and development, air quality, water quality, solid waste, and alternatives to the placement of fill in Turkey Creek.

The Corps secured the services of Fry Consultants, Inc. to further evaluate alternative brownfield and greenfield sites within the geographic market area for the proposed Lakefront Steel Plant.

The Corps requested that EPA provide answers to a series of questions on air and water quality issues.⁸⁹ A similar request was transmitted to the U.S. Federal Regional Council on November 29, 1978.⁹⁰ Responses were received from the EPA on February 12, 1979, and from the Federal Regional Council on January 15, 1979.⁹¹

⁸⁶AR, Vol. III.

⁸⁷AR, Vol. III.

⁸⁸AR, Vol. III.

⁸⁹AR, Vol. III.

⁹⁰Ar, Vol. III.

⁹¹AR, Vols. 116, 113.

Between December 1, 1978, and February 9, 1979, U.S. Steel provided technical responses for the comments received during the review period for the DEIS. This information was considered by the Corps staff during preparation of the FEIS. The Corps requested that U.S. Steel resolve all inconsistencies between the data contained in the Fish and Wildlife Management Plan prepared by Fahringer, McCarty and Grey, Inc., and the DEIS.⁹² A follow-up request was transmitted to U.S. Steel on January 22, 1979.⁹³ The Corps furnished copies of the plan to the Technical Team and other governmental officials, requesting their comments.⁹⁴ The Technical Team was also advised that a plan for resolution of siting and design problems associated with the raw water intake for the proposed steel plant had been formulated.⁹⁵

On January 12, 1979, Fry Consultants, Inc., submitted its report on the analysis of alternative sites for the proposed U.S. Steel Lakefront Plant.⁹⁶

The Technical Team met on January 18, 1979, to consider additional aquatic studies associated with the siting of the raw water intake for the proposed steel plant.⁹⁷ The U.S. Fish and Wildlife Service forwarded the completed scope of work to the Corps on February 8, 1979.⁹⁸

Copies of all comments on the Fish and Wildlife Management Plan were sent to U.S. Steel for review. In the letter of transmittal, the Corps specifically pointed out that the

⁹²AR, Vol. 112.

⁹³AR, Vol. 113.

⁹⁴AR, Vol. 113.

⁹⁵AR, Vol. 112.

⁹⁶AR, Vol. 113.

⁹⁷AR, Vol. 113.

⁹⁸AR, Vol. 116.

February 14, 1979, correspondence from the U.S. Fish and Wildlife Service represented advance notice of intent to request permit denial.⁹⁹

On April 2, 1979, The FEIS was forwarded to the Division Engineer, North Central Division for review and transmittal to higher authority.¹⁰⁰ The Division Engineer completed his review of the FEIS and forwarded it to the Office of the Chief of Engineers in Washington, D.C., for further review and forwarding to the EPA.¹⁰¹

On May 4, 1979, a notice appeared in the Federal Register indicating that the FEIS had been filed with the EPA on April 26, 1979.¹⁰² Copies of the FEIS were distributed to Federal, State, and local agencies, public interest groups and interested individual on April 26, and 27, 1979.¹⁰³ The official 30-day comment period began on April 26, 1979. A notice of availability was widely distributed throughout the regional impact area on April 27, 1979.¹⁰⁴

The official position of the Commonwealth of Pennsylvania was provided by the State Clearinghouse.¹⁰⁵

⁹⁹AR, Vol. 116.

¹⁰⁰AR, Vol. 117.

¹⁰¹AR, Vol. 117.

¹⁰²AR, Vol. 117.

¹⁰³AR, Vol. 117.

¹⁰⁴AR, Vol. 117.

¹⁰⁵AR, Vol. 117.

APPENDIX B

OFFICE OF THE CLERK

United States Court of Appeals
21400 United States Courthouse
Independence Mall West
601 Market Street
Philadelphia 19106

SALLY MRVOS
CLERK

TELEPHONE
215-597-2995

[sic] September 27, 1983

(Blair S. McMillin, Esquire
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(Eric A. Schaffer, Esquire
Reed, Smith, Shaw & McClay
Union Trust Building
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Re:Lake Erie Alliance for the Protection of the
Coastal Corridor, etc., et al., Appellants v.
U.S. Army Corps of Engineers, etc., et al.- No.
82- 5156.

Dear Counsel:

At the oral argument of the above case on January 23rd the Court expressed concern that this case might be moot in view of the lapse of time and the fact that the corporation has apparently not gone ahead with its planned construction.

The Court would like to be advised within fifteen (15) days from the date of this letter whether the case is moot in the corporation's view. An original and three (3) copies of

23a

your response should be filed with certificate of service on opposing counsel.

Very truly yours,

SALLY MRVOS, Clerk

By: /s/ **M. Elizabeth Ferguson**

Chief Deputy Clerk

mef

cc: Staughton Lynd, Esquire

Brent L. English, Esquire

Martin Green, Esquire

APPENDIX C

REED SMITH SHAW & McCLAY
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
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February 9, 1983

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M. Elizabeth Ferguson
Chief Deputy Clerk
United States Court of Appeals
For The Third Circuit
21400 United States Courthouse
Independence Mall West
601 Market Street
Philadelphia, PA 19106

Re: Lake Erie Alliance for the Protection of the
Coastal Corridor, etc., et al., Appellants v.
Army Corps of Engineers, etc., et al.-No.
82-5156.

Dear Ms. Ferguson:

In response to your letter dated [sic] January 27, 1983 and
the inquiry by the Court as to the present plans of United
States Steel corporation (USS) for the construction of a

new steel mill at Conneaut, Ohio, pleased be advised that USS does not consider this case moot.

In this regard, the Permit issued by the Corps of Engineers for the construction of the mill does not even require that construction be commenced until December 31, 1983. Permit No. 77-492-3 (effective June 18, 1979) provides in Special Condition (4):

"(4) That General Condition (o) is hereby amended to read as follows: That if the activity authorized herein is not started on or before the 31st day of December 1983 and is not completed on or before the 31st day of December 1989, this permit, *if not previously revoked or specifically extended, shall automatically expire.*" [Emphasis Added].

REED SMITH SHAW & McCLAY

M. Elizabeth Ferguson

Page -2-

February 9, 1983

In the view of USS the Permit is still a valid Permit, and USS wishes to retain all of its rights under the Permit.

By reason of the foregoing, USS respectfully submits that neither Article III nor policy considerations preclude review and disposition of the issue on appeal. Accordingly, as counsel for USS, we strongly urge the Court to reinstate its judgment order dated January 25, 1983, affirming the judgment of the district court.

Respectfully submitted.

/s/ Thomas K. Wright

Thomas R. Wright
REED SMITH SHAW & McCLAY

Attorneys for Intervenor,
United States Steel Corporation.

Of Counsel:

John A. Byerly, Jr., Esq.
General Attorney—Real Estate
United States Steel Corporation

TRW:eac

APPENDIX C
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 82-5156

**LAKE ERIE ALLIANCE FOR THE PROTECTION
OF THE COASTAL CORRIDOR, et al.,**

Appellants,

v.

**UNITED STATES ARMY CORPS OF ENGINEERS,
et al.**

[Civil No. 79-110 - W. D. Pa. - Erie]

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is counsel for the Intervenor, United States Steel Corporation, in the above-captioned matter, and that a copy of the foregoing has been served on the following counsel of record by United States Mail, postage prepaid, this 9th day of February, 1983:

**Staughton Lynd, Esq.
Northeast Ohio Legal Services
804 Metropolitan Tower
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**Brent L. English, Esq.
Weiner, Orkin, Abbate & Suit Co., L.P.A.
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**Martin Green, Esq.
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Washington, D.C. 20530**

/s/ Thomas K. Wright

Thomas R. Wright

APPENDIX D

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Richard G. Wilkins
Office of the Solicitor General
United States Department of Justice
Washington, D.C. 20530

**Re: Lake Erie Alliance for the Protection of the
Coastal Corridor, et al. v. United States Army
Corps of Engineers, et al.**

Dear Mr. Wilkins:

This will confirm our conversation today in which I advised you that United States Steel Corp. does not presently plan to begin construction of the proposed Conneaut mill.

Very truly yours,

REED SMITH SHAW & McCLAY
By
Eric A. Schaffer

EAS:cal
cc: John A. Byerly, Jr., Esquire